

**COMPASSPOINT
NONPROFIT DAY**

June 27, 2008

“The New IRS Form 990: What You Need to Know”

- I. Comments of State Charity Officials
 - A. Support concept: transparency and improved governance
 - B. Raising the filing threshold
 - 1. Concern re raising threshold during phase-in, and permanent change for EZ filers
 - 2. State charity officials see high level of waste, mismanagement and misappropriation in nonprofits at lower revenue levels
 - 3. *Reminder* to all charities that RRF-1 is due annually from all, regardless of revenue level.
 - C. Governance questions: do they create confusion regarding jurisdiction?
 - 1. Attorneys general enforce provisions of the Nonprofit Corporation Law (see Corporations Code section 5250¹) and trust law principles.
 - 2. California Attorney General also has jurisdiction under:
 - a. *The Supervision of Trustees and Fundraisers for Charitable Purposes Act* (Government Code section 2580 et seq.);
 - b. *Unfair Competition Law* (Business & Professions Code section 17200, 17500 et seq.)
 - 3. Governance standards under California law may differ from those applied by IRS.

¹Unless otherwise noted, all references are to the Corporations Code.

II. How does California law apply to governance questions on the new Form 990? A brief review of California laws that should come to mind when reviewing specific questions.

A. Core form

1. Part VI: Governance, Management, and Disclosure (p.6)

a. Section A (Governing Body and Management)

- line 1a: section 5210, 5213 (neither Secretary nor CFO can serve as president/CEO)
- line 1b: section 5227 (49% rule - no more than 49% of the board can be interested persons)
- line 2: section 5233 (self-dealing transactions)
- line 3: sections 5210, 5212, 5231 (delegation of management duties)
- line 4: sections 5810 - 5820 (changes to organizational documents)
- lines 6-7: sections 5310-5354 (issuance, types, transfer, termination and rights and obligations of members)
- line 8: sections 5211, 6320 (documentation of board meetings)
- line 10: section 5231 (board review of 990 before filing)

b. Section B (Policies)

- line 12a: sections 5231, 5233, 5236, 5237 (conflict of interest, self-dealing, fiduciary duty)
- line 15 - section 5235; Gov. Code sec. 12586 (compensation review - see also Part VII of core form and Schedule J)

c. Section C (Disclosure)

- line 18 - Gov. Code sec. 12586 (making audit available)

2. Part VII: Compensation - see generally section 5235, Gov. Code sec. 12586

- a. Remember: section 5236 governs loans that can be made. Generally, loans are prohibited without AG approval (but see exemptions).

- B. Schedule G: Fundraising - see generally Gov. Code sec. 12599 - 12599.2, and Bus. & Prof. Code sec. 17510 et seq.
- C. Schedule H: Hospitals
 - 1. Health & Safety Code section 127340 - requires adoption of community benefit plan and filing of annual report with Office of Statewide Health Planning and Development (OSHPD)
 - 2. Health & Safety Code section 127400 - sets forth specific billing and collection practices and requires annual submission of discount payment and charity care policies to OSHPD
- D. Schedule L: Transactions with interested persons - see section 5233
- E. Schedule N: Corporate changes - see www.ag.ca.gov/charities for information regarding transactions that require notice to, or approval by the AG

See generally, the AG website for all forms, instructions, guidance, FAQs, laws and regulations, and the Guide for Charities.